

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 23-10-1996.

SPECIAL CIVIL APPLICATION No. 4808 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No.
5. Whether it is to be circulated to the Civil Judge?
No.

Gani Hasan, Heir of Hasan Gani & 30 others.

Versus

The Collector, Junagadh and Others.

Appearance:

Mr. K.G. Vakharia, Advocate for the petitioners.

Ms. Parmar, A.G.P. for the respondents.

CORAM : H.R.SHELAT, J.

23/10/96

ORAL JUDGMENT

The petitioners pray for a writ of mandamus or any other appropriate writ, direction or order, directing the respondents to implement Clause 7 of the award, copy of which is produced at Annexure 'B' and allot the suitable plot free of cost in lieu of their properties acquired.

2. The case of the petitioners may in brief be stated. The

petitioners belong to the minor community. They reside at Veraval in Junagadh district. For the last several years they were residing in houses at Veraval close to the well-known Somnath temple. For the development of the temple more lands around the same were found necessary. Hence the houses of the petitioners were acquired in the year 1951 undergoing necessary formalities under the Land Acquisition Act. At the time of acquisition they were assured that over and above the monetary compensation they were entitled to, they would be provided with alternative plots so that they would be able to construct their residential premises. It was also assured that alternative site would be provided within the local limits of Veraval-Patan city. Despite such assurance in the year 1951, no action was taken by the respondents and several years rolled by. The petitioners continued to apply for the alternative site and at times made several representations in this regard, but their efforts went in vain. As no heed was paid to their representations and requests with no option therefore the present petition has been filed.

2. Mr. Vakharia, learned counsel for the petitioner has submitted that when once the State adopts a particular policy and thereunder assures the persons who lose their property because of the acquisition under Land Acquisition Act, it is imperative upon the State to fulfil its obligation rather than reneging on the same. If the State retreats, it would amount to doing something contrary to law. Against such submission, Ms. Parmar, learned A.G.P. has contended that in view of the decision of the Apex Court rendered in the case of New Riviera Co.op Housing Society & Another vs. Special Land Acquisition Officer & Ors; and Harjang Singh Grewal (Retd) vs. Union of India & Another - 1996 (1) S.C.C. 731, the State is not obliged to provide alternative site even if the property is acquired under the Land Acquisition Act; not even under the guise of a right to shelter or dignity of person. The petition therefore deserves to be rejected.

3. It seems, keeping part of the decision of the Supreme Court in mind, the learned A.G.P. has made the submission but another relevant part of the decision has been lost the sight of. No doubt, the Supreme Court has, in the case of New Riviera Co-operative Housing Society (Supra), made it clear that if under the Land Acquisition Act the State acquires the property of a citizen, the right to livelihood or right to shelter or dignity of a person are not affected and State is not obliged to provide alternative site. But it has made it clear that in case the State comes forward with a proposal to provide alternative sites, certainly the Court gives effect to that proposal and appropriate direction in that behalf can be issued because the State when comes forward with some proposal or policy or assurance, the same has to be adhered to and

implemented in letter and spirit.

4. In this case, therefore, what is required to be determined is whether the State while acquiring the properties of the petitioners came forward with the assurance pleaded by the petitioner. On behalf of the State, affidavit of Rajendra H. Gadhvi, the Deputy Collector at Valsad has been filed wherein it is made clear that the assurance as alleged for providing alternative site was given, and the State also fulfilled its obligation by preparing the list of the allottees and providing alternative plots to all the petitioners except the petitioners Nos. 22 and 31. In view of such averments made in the affidavit, it is crystal clear that the petitioners were given the assurance of providing alternative site in lieu of their premises acquired under the provisions of Land Acquisition Act adopting rehabilitation policy.

5. When accordingly the State has adopted the policy and has given the assurance, it is its boundened duty to implement the same in letter and spirit equally. It cannot adopt a pick and choose policy, for, all those who are covered under the policy and similarly placed should be treated equally. If that is not done, it would amount to discrimination condemned by law. In this case, as made clear in the affidavit by the Deputy Collector, all the petitioners, except petitioners Nos. 22 & 31, have been provided with the alternative sites and thus to a greater extent the assurance given has been fulfilled, but for these two petitioners the State has yet to fulfil its obligation.

6. So for as petitioner No.31 is concerned, the State has assigned the reasons for delay. According to the Deputy Collector, some persons have encroached upon the land kept aside for the purpose of allotment to the petitioner No.31. As the land has been encroached upon, allotment has been delayed. Soon after the removal of the encroachment, the plot would be handed over to the petitioner No.31 is also the say of the State. Right from 1951, the petitioner No.31 has been yearning for the alternative site so as to have a shelter. The same, being the most essential requirement of a human being, cannot be ignored or lightly viewed. The State cannot delay the allotment of alternative site and keep the petitioner No.31 on tenter-hook. If at all it is not possible for the State to provide a particular plot kept reserved, because of the encroachment, it is its duty to provide another alternative site within the local limits of Veraval-Patan city and fulfil its obligations. In this regard, therefore, the petitioner No.31 is entitled to have necessary direction against the respondents.

7. So for as the petitioner No. 22 is concerned, he is not

entitled to any alternative site because as made clear in the affidavit by the Deputy Collector, his no property has been acquired, he is the owner of no property and no award in his favour has been passed under the acquisition proceedings. Under the scheme of rehabilitation he is not included in the list of allottees. When that is so, he is not at all entitled to alternative site because he derives no benefit under the scheme adopted by the State. So far as his case is concerned, the same is required to be struck down.

8. Rest of the petitioners have been allotted with the sites and their grievance has been remedied during the pendency of the petition which is not called in question. No direction qua those petitioners can, therefore, be given to the respondents.

9. In the aforesaid circumstances, the petition is partly allowed. The respondents are hereby directed to allot the alternative plot to petitioner No.31 within a period of 6 (six) months from today. The petition, so far as it relates to other petitioners, is hereby rejected. No costs in the circumstances of the case. Rule to the above extent is made absolute.

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